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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 MICHAEL DAVITT,

8 *Petitioner,*

9 vs.

10 E.K. MCDANIEL,

11 *Respondent.*

3:10-cv-00245-ECR-VPC

ORDER

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14 This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review
15 under Rule 4 of the Rules Governing Section 2254 Cases.

16 Petitioner's papers are subject to multiple defects.

17 First, petitioner did not either file an application to proceed *in forma pauperis* or pay the
18 filing fee. Petitioner attached with the petition a financial certificate and a statement of his
19 inmate account. Under Local Rule LSR 1-1, a pauper application must be made on the
20 Court's required form. Petitioner, who is a frequent filer in this District and who has been
21 made aware of the requirements for initiating a civil action in this Court, did not do so.

22 Second, petitioner did not sign the petition and the verification. He instead initialed the
23 petition and verification. He instead must sign the petition and verification, which he has done
24 on numerous pleadings filed in this Court previously.

25 Third, the petition fails to state a claim upon which relief may be granted. The sole
26 ground presented does not allege with specificity any constitutional violations committed by
27 the state courts. The ground instead sets forth a diatribe by petitioner regarding this Court's
28 handling of his prior federal habeas petitions.

1 Fourth, the petition is successive. The subject of the petition is petitioner's conviction
2 for burglary in No. C220149 in the Eighth Judicial District Court for the State of Nevada. This
3 Court previously has denied two petitions by petitioner challenging this conviction either on
4 the merits or on the merits and on the basis of procedural default. See No. 3:07-cv-00344-
5 RCJ-VPC and No. 3:08-cv-00431-ECR-RAM. If an earlier federal petition is dismissed on
6 the merits or for procedural default, any subsequent petition challenging the same judgment
7 of conviction or sentence will constitute a second or successive petition. *See, e.g., Henderson*
8 *v. Lampert*, 396 F.3d 1049, 1052-53 (9th Cir. 2005). Under 28 U.S.C. § 2244(b)(3)(A), before
9 a second or successive petition is filed in the district court, the applicant first must obtain an
10 order from the Court of Appeals authorizing the district court to consider the petition.

11 Given the multiple defects presented, and the failure to properly present any specific
12 viable claims in the papers submitted, the action will be dismissed without prejudice.

13 IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice.

14 IT FURTHER IS ORDERED that a certificate of appealability is DENIED, as jurists of
15 reason would not find the dismissal of the petition to be either debatable or wrong.

16 The Clerk of Court shall enter final judgment accordingly, dismissing this action without
17 prejudice.

18 DATED: April 30, 2010

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22 EDWARD C. REED
23 United States District Judge
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